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missioner to determine the various facts on which citizenship depends, but under the circumstances they evidently mean that a commissioner may determine the facts in the first instance. This conclusion is strengthened by the fact that in the Wong Kim Ark case the court took jurisdiction and reversed the decision of the commissioner. It may be said that there the court was deciding the question of law as to whether or not a person born in this country of Chinese parents was a citizen, while here the issue is a question of fact. But one is a judicial question within the meaning of the Constitution as well as the other. If citizenship is a judicial question at all, the executive department has not the constitutional right to determine exclusively either the law or the facts upon which the claim thereto is based.

INTERPRETATION OF A CHARTER EXEMPTING A CORPORATION FROM TAXATION.—The taxing power vested in the legislatures of the different States is of such vital importance to the life of the State that any Act of a legislature impairing it is examined closely by the courts, and the legislative intent must be very plainly expressed or it will not be enforced. *Ins. Co. v. Tenn.* (1896) 161 U. S. 174. The legislature has such power, however, and may, with certain restrictions, exempt from taxation whatever it chooses; and such exemption may be perpetual provided it is given by contract. Consequently an exemption contained in the charter of a corporation will give to the corporation immunity from taxation for the life of the charter, a charter being a contract. *Dartmouth College v. Woodward* (U. S. 1819) 4 Wheat. 518. Applying this rule of strict construction it is held that a statute exempting the property of manufacturing corporations from taxes exempts only such property as is used in the business of manufacturing. *State ex rel. R. R. v. Dist. Court* (1897) 68 Minn. 242; *Commonwealth v. Mahoning Co.* (1889) 129 Pa. St. 360. And a clause exempting property from taxation is held not to exempt it from assessments for local improvements. *Ford v. Land Co.* (1897) 164 U. S. 662. It would seem then that where there is a reasonable doubt as to the intention of the legislature, the exemption should be held not to include the tax in dispute.

The United States Supreme Court has recently interpreted an exemption of this character, and although it expressly states that it recognizes this rule of strict construction, yet in the result reached it seems not to have applied it consistently. The exemption was contained in the charter of a bank and was from "any tax" upon the "capital of said bank." The tax imposed, the collection of which was opposed by the bank, was a license tax imposed upon all banks varying with the amount of the capital of the bank. It was held by a divided court, three Justices dissenting, that such a tax came within the exemption and that therefore the bank was not liable. *Citizens' Bank v. Parker* (1904) 192 U. S. 73. The prevailing opinion held that the legislature in saying "any" tax, could not have had in mind any distinction between a license tax and a property tax and that both were included, and, further, that any tax which was ultimately paid out of the capital was a tax on the capital. The dissenting

opinion, on the other hand, adhering, it would seem, more closely to the general rule insisted upon a strict interpretation of the exemption and argued that a license tax being a very different thing from an ordinary or property tax should not be held to be within the exemption since such intention of the legislature was not clear, nor should a tax which will ultimately be paid out of the capital be held on that account to be necessarily a tax on capital, for if that were so no tax of any description could be imposed upon a corporation which would not be a tax on its capital.

The "capital" of a corporation according to the better economic view and the one most commonly held by the lay mind, and on that account the one that was most probably in the mind of the legislature, consists of the property, cash, and other assets with which the corporation carries on its business and does not include the permission or franchise to carry on that business. Taylor on Private Corporations, § 744a. Accepting that definition as being the one intended by the legislature in the principal case, the tax in question, being a tax on the franchise of the bank, would not be a tax on its "capital" and would not therefore come within the exemption. Add to this the further fact that a license tax differs radically from a property tax, *Hamilton Co. v. Mass.* (U. S. 1867) 6 Wall. 632, and remembering that any exemption should be strictly construed, it would seem that the court could, under the facts, have more properly reached a different result.

TREASURE TROVE—What appears to be the first reported controversy in this country over the possession of "treasure trove" arose recently in Oregon. Two boys while engaged in clearing out a hen-house on defendant's premises unearthed a rusty can containing \$7,000 in gold coin. They exhibited their find to defendant who took possession and bestowed a gratuity of five cents apiece upon the discoverers. The latter, however, subsequently sued in trover and the court supported their claim to the possession, applying the ordinary common law rule which sanctions the retention of lost property by the finder as against everyone but the former owner, *Danielson v. Roberts* (1904 Or.) 74 Pac. 913.

General jurisprudence distinguishes clearly between property which has been lost i. e. casually and involuntarily placed beyond the control of the owner, and treasure trove which is defined as an object of value which has been hidden for a very long time so that the owner is at present unknown. The former class of property has an owner in whose interest the finder is allowed to assume possession, while treasure trove is placed in the category of ownerless things to which an original title may be acquired on the principle of occupation. Early Roman law bestowed title to the whole hoard upon the finder. Emperor Hadrian introduced an equitable modification, which has been incorporated in the present codes of France, Germany, Spain and Louisiana, to the effect that one-half of the treasure should go to the owner of the place of discovery. But if the discovery be the result of deliberate search the land owner is entitled to the whole, except in Germany where the element of accident is not a condition of the find-